

\*\*Original filed 6/16/06\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES BOYD,

Petitioner,

vs.

MICHELLE SMITH,

Respondent.

No. C 06-3634 JF (PR)

ORDER OF TRANSFER

Petitioner, proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 8, 2006. Petitioner is currently incarcerated at Red Onion State Prison in Pound, Virginia. The Court notes that Petitioner challenges a condition of his confinement, alleging that John C. Maxwell injured Plaintiff's knee with a weapon. Petitioner does not allege any claim concerning the validity or legality of his underlying conviction.

A district court may construe a habeas petition by a prisoner attacking the conditions of his confinement as a civil rights action under 42 U.S.C. § 1983. See Wilwording v. Swenson, 404 U.S. 249, 251 (1971). Accordingly, this Court will construe the instant petition as a civil rights complaint pursuant to 42 U.S.C. § 1983.

1 Because the events occurred at Red Onion State Prison in Pound, Virginia, which lies  
2 within the venue of the Western District of Virginia, venue properly lies in that district  
3 and not in this one. See 28 U.S.C. §§ 127, 1391(b).

4 This case is therefore TRANSFERRED to the United States District Court for the  
5 Western District of Virginia. See 28 U.S.C. § 1406(a). In view of the transfer, the Court  
6 will not rule upon Plaintiff's motion for leave to proceed in forma pauperis (docket no. 2).  
7 The Clerk shall terminate all pending motions and transfer the entire file to the Western  
8 District of Virginia.

9 IT IS SO ORDERED.

10 DATED: 6/16/06

  
JEREMY FOGEL  
United States District Judge

1 A copy of this order was mailed to the following:

2  
3 James Boyd  
4 226451  
5 Red Onion State Prison  
6 P.O. Box 1900  
7 Pound, VA 24279  
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